

## **REMARKS**

Claims 1-36 and 38-41 are pending in the present application. Claim 37 was previously canceled, and claims 1-25 and 29 have been withdrawn from consideration. By this Amendment, claims 39-41 have been amended. No new matter has been added by the amendments. It is respectfully submitted that claims 26-28, 30-36 and 38-41 are in condition for allowance in view of the amendments and remarks presented herein.

Claims 26-28 and 38-41 are rejected under 35 U.S.C. § 102 as being anticipated over GB 2326583. Claims 30-34 are rejected under 35 U.S.C. § 103(a) as unpatentable over GB 2326583 in view of Zook (U.S. Patent No. 5,595,780). Claims 35 and 36 are rejected under 35 U.S.C. § 103(a) as unpatentable over GB 2326583 in view of Cashewbazar (2002) and Cashewbazar (2003). These rejections are respectfully traversed.

Applicant gratefully acknowledge the courtesies extended to Applicant's representatives during the June 27, 2006 telephonic interview.

### **Claim Rejection - 35 U.S.C. §102**

#### **I. Claims 26-28 and 38-41**

Claims 26-28 and 38-41 are rejected under 35 U.S.C. § 102 as being anticipated over GB 2326583. The rejection is respectfully traversed. Claims 27, 28 and 38 depend from independent claim 26. Claims 39-41 are independent.

The Office Action asserts, among other things, that "GB 2326583 discloses a dried, roasted testa-on cashew product (prior to removal of testa) wherein it is expected that the hot soaking of same would provide removal of some portion of tannins into solution from said testa (e.g. page 2, line 20 – page 3, line 14)." The Office Action further states that because GB 2326583 discloses removal of testa, that such product would inherently be available for consumption and that "it is further expected that said testa-on cashew product would further contain on (*sic.*) inedible chemical (as same was not employed in any extraction) and tannin and polyphenol in amounts within ranges called for in the instant claims due to incidental extraction of such components during soaking."

GB 2326583, entitled “Shelling Cashew Nuts Using a Laser,” is directed generally to using a laser (or several lasers) to cut, and then remove, the shell (*i.e.*, the pericap) of a nut, including, in particular, the shell of a cashew nut. *See, e.g.*, GB 2326583 at p. 4, l. 25 – p. 5, l.8 and p. 6, ll.6-13. As discussed in the attached Declaration Under 37 CFR § 1.132 of Harikrishnan R. Nair (the “Nair Declaration”), GB 2326583 describes, among other things, “a process for conditioning in-shell cashews with water and then exposing the cashews to a bath containing a diluted solution of cashew-nut-shell-liquid (CNSL) in order to remove some of the shell-oil before shelling the cashew (the “shelling process”).” Importantly, “[d]uring the wetting step of the (*sic.*) shelling process, the shell does not permit a sufficient quantity of water through it in order to significantly, if at all, alter the chemical composition of the testa. In other words, the wetting step of the (*sic.*) shelling process would remove, at most, only a very small amount of the chemicals present in the testa and certainly no more than on the order of approximately 10% of the total chemical content of the testa (*i.e.*, that the testa would still contain at least 90% if not more of its chemical content following completion of the shelling process).” *See* Nair Declaration at ¶ 4.

Thus, GB 2326583 does not inherently teach “[a] testa-on cashew product having a reduced tannin content, the testa-on cashew made from a process comprising the steps of:

- (a) exposing shelled testa-on cashews to a solvent;
- (b) removing inedible chemicals from said testa-on cashews; and
- (c) drying said testa-on cashews;

wherein said chemicals removed are concentrated in the testa of said cashews; and wherein said process removes more than approximately 10% of said chemicals from said testa of said cashew” as recited in independent claim 27.

Independent claims 39-41 are directed to edible testa-on cashew products having below approximately 10% of an inedible chemical content, tannin content and polyphenol content, respectively. The Office Action postulates that “[i]t is further expected that said testa-on cashew product would further contain on (*sic.*) inedible chemical (as same was not employed in any

extraction) and tannin and polyphenol in amounts within the ranges called for in the instant claims due to incidental extraction of such components during soaking.” (Emphasis added).

Applicant reiterates the remarks set forth above regarding GB 2326583 as applied to independent claim 26. As discussed above in connection with independent claim 26, GB 2326583 discloses a process in which in-shell cashews are exposed to water during a shelling process in which “the wetting step of shelling process would remove, at most, only a very small amount of the chemicals present in the testa and certainly no more than on the order of approximately 10% of the total chemical content of the testa (*i.e.*, that the testa would still contain at least 90% if not more of its chemical content following completion of the shelling process).” See Nair Declaration at ¶ 4. As such, GB 2326583 does not disclose an edible testa-on cashew products having below approximately 10% of an inedible chemical content, tannin content and polyphenol content as recited in independent claims 39-41, respectively.

In view of the foregoing, withdrawal of the rejection of independent claims 26 and 39-41 and dependent claims 27, 28 and 38 under 35 U.S.C. § 102 is respectfully requested

### **Claim Rejections - 35 U.S.C. §103**

#### **I. Claims 30-34**

Claims 30-34 are rejected under 35 U.S.C. § 103(a) as unpatentable over GB 2326583 in view of Zook (U.S. Patent No. 5,595,780). The rejection is respectfully traversed. Claims 30-34 depend from independent claim 26.

Applicant reiterates the remarks set forth above regarding GB 2326583 as applied to independent claim 26.

The Office Action cites Zook as disclosing that “it is well known to infuse salt, sugar, and a variety of ther flavoring ingredients into nuts including cashews...” and as teaching “coating nuts with [a] variety of material including sugar...” Although Zook does address the coating and/or infusion of certain nuts, such does not supply the deficiencies discussed above related to GB 2326583. Namely, Zook fails to disclose an edible testa-on cashew product (*i.e.*, in which the testa is

also edible) as recited in independent claim 26, and therefore fails to provide the deficiencies of GB 2326583 as described above.

In addition to the substantive deficiencies noted above, the requisite motivation is lacking to combine or modify the teachings of GB 2326583 and Zook to arrive at the invention recited in dependent claims 30-34 (or independent claim 26). In particular, neither of the references teaches or suggests an edible testa-on cashew product as recited in independent claim 26. Thus, it is respectfully submitted that GB 2326583 and Zook fail to disclose the invention recited in dependent claims 30-34. Therefore, withdrawal of the rejection of dependent claims 30-34 under 35 U.S.C. § 103(a) is respectfully requested.

### **III. Claims 35 and 36**

Claims 35 and 36 are rejected under 35 U.S.C. § 103(a) as unpatentable over GB 2326583 in view of Cashewbazar (2002) and Cashewbazar (2003). The rejection is respectfully traversed. Claims 35 and 36 depend from independent claim 26.

Applicant reiterates the remarks set forth above regarding GB 2326583 as applied to independent claim 26.

The Office Action cites Cashewbazar (2002) as teaching “the sale of cashews with skin.” The Office Action further cites Cashewbazar (2003) for the proposition “that [cashews with skin] is packaged (albeit rare)” and that the cashews with skin for sale in Cashewbazar (2003) “would inherently exist for use as a snack food.” The Office Action further states that “[i]t would have been further obvious as a matter of preference to provide this added or allowed for this cashew feature in GB 2326583 depending on the particular taste/texture of cashew desired or constraints on perfection in manufacturing.”

Cashewbazar (2002) discloses a pricing list for various cashews by weight, including for “cashews with skin.” Notably, Cashewbazar (2002) provides no indication whatsoever that the testa of the offered “cashews with skin” are edible (*i.e.*, that the offered “cashews with skin” can or should be consumed without first removing the skin). Moreover, Cashewbazar (2002) provides no suggestion that the skin of the offered “cashews with skin” has been treated (*e.g.*, to

remove the inedible chemicals from the testa) so as to render the skin (*i.e.*, testa) edible as recited in independent claim 26. Thus, Cashewbazar (2002) fails to disclose an edible testa-on cashew product as recited in independent claim 26, and therefore fails to provide the deficiencies of GB 2326583 as described above.

Cashewbazar (2003) states, among other things, “[i]t is not possible to open the [cashew] shell while snacking and the skin is also bitter. That’s why you never see cashews in-shell and only rarely with skin in consumer packets.” Although Cashewbazar (2003) indicates that cashews with testa are occasionally offered for purchase by consumers, such does not speak to whether the testa of such cashews are edible and/or have been treated so as to render them edible. Indeed, as explained at page 7 of the present application, Applicant discusses the sale of such testa-on cashews and, in particular, the fact that although such are sometimes available for consumer purchase, that “[t]hese cashews, however, *must be peeled before being eaten because the testa is very astringent, thus making them inedible.*” (Emphasis added). Thus, Cashewbazar (2003) fails to disclose an edible testa-on cashew product (*i.e.*, in which the testa is also edible) as recited in independent claim 26, and therefore fails to provide the deficiencies of GB 2326583 as described above.

In addition to the substantive deficiencies noted above, the requisite motivation is lacking to combine or modify the teachings of GB 2326583 with Cashewbazar (2002) and Cashewbazar (2003) to arrive at the invention recited in dependent claims 30-34 (or independent claim 26). In particular, none of the references teaches or suggests an edible testa-on cashew product (*i.e.*, in which the testa is also edible) as recited in independent claim 26. Thus, it is respectfully submitted that GB 2326583, Cashewbazar (2002) and Cashewbazar (2003) fail to disclose the invention recited in dependent claims 35 and 36. Therefore, withdrawal of the rejection of dependent claims 35 and 36 under 35 U.S.C. § 103(a) is respectfully requested.

Therefore, withdrawal of the rejection of dependent claims 35 and 36 under 35 U.S.C. § 103(a) is respectfully requested.

**Conclusion**

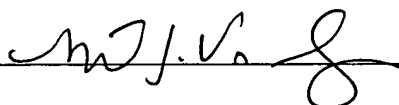
For all of the foregoing reasons, it is respectfully requested that the rejections set forth in the Office Action be withdrawn. Applicant submits that claims 26-28, 30-36 and 38-41 are allowable over the art of record, and that the application is in condition for allowance. Favorable reconsideration of this application and a timely Notice of Allowance are therefore respectfully requested.

The Examiner is invited to contact Applicant's undersigned attorneys by telephone to discuss any matters in order to expedite the progress of the present application toward allowance.

If there are any other fees due in connection with the filing that are not enclosed herewith, please charge any fees or credit any overpayment to our Deposit Account No. 50-1349. If a fee is required for an extension of time under 37 C.F.R. § 1.136 that is not accounted for in the enclosed transmittal, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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